

RICS Practice Standards, UK

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# Defining completion of construction works

1st edition, guidance note



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# Defining completion of construction works

RICS guidance note

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# RICS guidance notes

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**This is a guidance note. It provides advice to RICS members on aspects of their work. Where procedures are recommended for specific professional tasks, these are intended to represent ‘best practice’, i.e. procedures which in the opinion of RICS meet a high standard of professional competence.**

Although members are not required to follow the advice and recommendations contained in the note, they should note the following points.

When an allegation of professional negligence is made against a surveyor, a court or tribunal is likely to take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the member had acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this note should have at least a partial defence to an allegation of negligence if they have followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

Alternatively, it does not follow that members will be found negligent if they have not followed the practices recommended in this note. It is for each surveyor to decide on the appropriate procedure to follow in any professional task. However, where members do not comply with the practice recommended in this note, they should do so only for a good reason. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice. Also, if members have not followed this guidance, and their actions are questioned in an RICS disciplinary case, they will be asked to explain the actions they did take and this may be taken into account by the Panel.

In addition, guidance notes are relevant to professional competence in that each member should be up to date and should have knowledge of guidance notes within a reasonable time of their coming into effect.



# 1 Introduction

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This guidance note is intended to summarise the principal features of completion of construction works under a variety of construction contracts. It is intended to be of use to surveyors who are certifying, or providing services in consequence of or in relation to, completion of construction works.

This note may therefore be of use to any surveyor carrying out any of the following activities:

- Certifying completion of works
- Certifying payment after completion of works
- Analysing delay
- Advising on the deduction of delay damages
- Advising on insurance provisions
- Advising clients of their occupancy options if works are delayed
- Advising main contractors or specialist contractors on issues such as release of retention, rectification of defects, etc.
- Advising purchasers, tenants, bondsmen and other third parties of their rights and obligations
- Resolving or adjudicating disputes related to any of the above activities
- Drafting or reviewing contract documents

Completion of projects as complex as construction works is rarely a scientific or purely logical process but requires a degree of evaluation. It will rarely be appropriate to withhold a completion certificate because of very minor defects or where the cost of remedial works is wholly disproportionate to the benefit to be derived.

The question of completion can be further complicated by pressures from the client. Sometimes the client applies pressure to take occupation even though the works are not finished. On other occasions circumstances may have changed (e.g. the client may have lost a tenant) and the client may not want to take occupation (preferring instead to deduct liquidated damages, for example) for as long as possible.

Many contracts for civil engineering projects (as opposed to building projects) adopt a softer

approach to construction and require the client to take possession once the works are fit to be used despite the fact that there may still be ongoing works such as planting, etc.

## 1.1 What does completion mean in the context of commercial contracts generally?

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In commercial contracts generally (i.e. contracts for the provision of goods and services), and subject to express provisions to the contrary, performance under the contract is not complete until all of the obligations imposed by the contract have been satisfied. In other words the contract is not complete if there are still works to be done or repairs to be made or documents to be provided.

Examples of express provisions to the contrary would be clauses dealing with sectional completion (see section 2.7 below) or partial possession (see section 2.8 below).

## 1.2 Why is this different in the context of construction and engineering projects?

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While the question of completion does not usually cause too many problems in the provision of simple goods or services the same cannot be said of complex and expensive systems such as buildings.

Imposing overly onerous criteria for completion on construction projects can often result in perceived unfairness. This can especially materialise where relatively minor but time consuming remedial works, which need not prevent the occupation of the building, can result in the builder being exposed to significant liabilities for liquidated damages.

## 1.3 What minimum service level is a surveyor required to deliver at completion?

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The services that the surveyor provides, in the context of completion of the works, will dictate the minimum level of service that the surveyor is

required to provide. For example, if the surveyor is required to certify completion of the works he will be expected to use reasonable means to satisfy himself that the works are free from all but very minor defects, to identify any defects that do exist, and to assess the scope and potential disruption that could be caused by remedial works if the works are to be taken into possession before all of the defects are rectified. However, if the surveyor's task is limited to valuing the works at completion it will usually be sufficient for him to satisfy himself that the works have been done, without undertaking any further independent enquiry as to whether they have been done properly or not.



## 2 General principles: level 1 – knowing

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Guidance given in this section relates to the key principles involved in completion of the works. Surveyors involved in providing services in consequence of completion will be expected to possess, as a minimum, this basic level of knowledge.

### 2.1 When is a construction and engineering project complete?

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Subject to any express provisions in the contract, construction and engineering projects are not complete until all of the services required by the contract have been provided to a standard consistent with the requirements of the contract. Such services may include the provision of manuals, demonstrations and training, which, unless the contract states otherwise, will be required to be provided before the works can be said to be complete.

The criteria relating to whether or not the service or workmanship has been provided to the required standard will include:

- any relevant provisions of the contract
- any relevant provision of the specification
- the purpose for which the works are intended, and
- any statements made by the contractor prior to his or her appointment, such as specific skills or experience.

### 2.2 Why does it matter?

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Completion of a construction project often directly triggers a number of consequent actions or obligations, or marks the end of any further liabilities. Some common examples, depending on the contract involved, are:

- The client takes possession and control of the building
- Cessation of any further liability for delay damages, whether liquidated or unliquidated
- Risk of loss or damage to the works passes to the client, which therefore terminates any further requirement on the contractor to insure and secure the works

- Commencement of a defects liability, rectification or maintenance period
- Milestone payment or release of retention monies
- A requirement for an account of the works to be prepared
- Obligations under third party agreements such as funding arrangements, bonds, guarantees, leases, sale agreements etc.

### 2.3 Practical completion under the JCT forms of contract

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Under the JCT contracts, completion of the works is generally referred to as ‘practical completion’. Some have tried to interpret the phrase as allowing a state of less than full completion. In this context, the phrase ‘beneficial occupation’ was often used to describe the standard of completion that was required by the phrase ‘practical completion’, meaning the client is physically able to take occupation of the works and use them for their intended purpose. There is, however, no legal basis for the use of such a test. Even if the works can be beneficially occupied, unless the contract provides otherwise, if the works are not finished the client is not obliged to take possession.

The test of completion is, however, subject to a limited test of reasonableness known as the de minimis principle. This means that certification of completion of the works should not be refused if there are only very minor defects in the works.

### 2.4 Completion under the NEC forms of contract

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Under the NEC form of contract, completion is defined as when all the work required by the ‘works information’ is completed by the specified completion date, and all notified defects that would prevent the client from using the works are corrected.

This implies that completion is achieved even if there are notified defects still present within the

works, provided that those defects do not prevent the client from using the works.

## 2.5 Completion under the FIDIC forms of contract

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Under the FIDIC forms of contract, which are principally used on international projects, the client takes possession of the works when the works have reached a state of completion known as 'substantial completion'.

Substantial completion is primarily determined by whether or not the works are sufficiently complete to be fit for their purpose from a functional perspective. Other criteria might include the cost of remedial works in proportion to the value of the original works.

## 2.6 Completion of sub-contractors' works

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It is important for the main contractor to link his sub-contractors into similar obligations regarding completion to the ones he is subject to under the main contract; otherwise completion may have to be accepted from his or her sub-contractors when their works are not classified as complete under the main contract.

This could mean that the main contractor is liable for liquidated damages because of his or her sub-contractors works and would be unable to pass that liability onto the sub-contractors.

The most obvious way for the main contractor to deal with this issue is to repeat in the sub-contracts the obligation to which he is subject in the main contract. However, if there is a dispute as to whether or not that obligation has been satisfied the main contractor could still be left in the unsatisfactory position of different adjudicators deciding the issue in different ways.

In order to overcome this problem a common approach is for the sub-contract conditions to state that the sub-contract works will not be considered complete until the main contract works have been accepted by the client.

For many trades, such as mechanical and electrical services, decorations, etc. such an obligation is not usually contentious as the completion of those trades is usually relatively close to completion of

the works as a whole. However, for some trades such as piling, drainage, etc. these provisions mean that the sub-contractors' works may not be classed as officially complete until many months after the actual completion of the sub-contractor's works on site. The sub-contractor therefore may be responsible for loss or damage to the sub-contract works long after the works are in fact complete and may not be entitled to payment of the sum due on completion until all of the other works are also complete.

## 2.7 Sectional completion

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On many projects the client will wish to take one or more sections of the works without waiting for the whole of the works to be completed.

This could be the case where part of the works restricts the use of facilities on an existing site and if the scope of works for this section is relatively small it can be occupied earlier than completion of the whole works, thereby minimising the disruption to the existing facility. Alternatively if the works include, for example, shop units at ground floor with flats above, the shop units might be taken at an early stage to allow the retail tenants to do their fitting-out concurrently with completion of the flats above.

Sectional completion is usually anticipated by the contract documents and pre-planned with separate completion dates, extension of time provisions and liquidated damages.

If delay to one section causes a delay to a subsequent section then the contract will need to make adequate provision for an extension of time in those circumstances. For example, if the contract is for the refurbishment of two blocks of flats and it anticipates section one being completed before transfer of the tenants to allow section two to proceed, then any client delays in section one will have a direct impact on the completion of section two. Unless the extension of time provisions in section two make provision for this the client will be deprived of its right to deduct liquidated damages for other delays to section 2.

## 2.8 Partial possession

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Sometimes the client will wish to take possession of part of the works even though this is not specifically anticipated by the contract documents.

If, for example, when constructing a block of flats, the client sells the penthouse suite to a purchaser who requires a lot of changes to be made, which may delay completion of that suite, the client may wish to take possession of the other flats that have already been completed in order to complete the sales of those flats as soon as possible.

In this case the client can take partial possession of a defined scope of works (e.g. the completed flats) before the works as a whole are complete.

Partial possession can only be taken with the consent of the contractor but that consent may not usually be unreasonably withheld. For example the contractor would not be entitled to withhold his consent in order to improve his bargaining position in a separate dispute over payment but would be able to do so if, for example, he could show that occupation of apparently completed areas would hinder his ability to complete the remaining areas. Examples of ways in which occupation could hinder completion would be if occupation required the contractor to limit the amount of noise or dust created, or if the contractor was restricted from working on mains services or if occupation required the maintenance of fire escape routes through the contractor's working areas and such like.

Partial possession usually anticipates discrete areas of the works being taken into possession by the client at an early stage. On some occasions the client may try to use the partial possession contractual mechanism as a means of reserving its rights over potentially defective elements of the works. For example, the client might try to take partial possession of everything except the roof. The partial possession mechanism is not designed with this purpose in mind and is unlikely to be successful either in protecting the client's rights to deduct liquidated damages or in extending the defects liability period for the alleged defective element.

# 3 Practical application: level 2 – doing

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This section looks in more detail at the concept of completion and begins to look at the practical application of the general principles.

## 3.1 Clarifying the test of completion to be applied

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Although, as stated above, whilst most commercial contracts require all of the works to be complete before completion can be said to have been achieved this approach comes as a surprise to many of those involved in the construction industry. This surprise can perhaps be explained as follows:

- the common use of liquidated damages in construction contracts for contract overruns which many contractors consider to be unfair in circumstances where the client is in a position to occupy and use the property as intended even though there might remain a small amount of relatively insignificant works outstanding,
- the historical and well established practice of contract administrators exercising discretion in certifying completion even though there are still works of a relatively minor nature outstanding, and
- the inherent nature of one-off construction projects (in contrast to factory manufacturing processes) which involve or are at the mercy of external influences such as weather patterns and which involve the integration of huge numbers of separate processes, products, teams and individuals usually on a unique basis.

For all of the above reasons it is advisable for the parties, through their respective advisers, to clarify, before the contract is signed, the basis upon which completion of the works will be certified and the discretion to be exercised by the contract administrator. Not only will this avoid surprises (and therefore reduce the scope for dispute) but such an approach is likely to lead to greater certainty in the agreement between the parties and a higher degree of trust which in turn should encourage and facilitate a more successful outcome for all of those involved.

## 3.2 Agreeing completion dates

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Most contracts will provide a mechanism whereby the completed works are offered up as complete by the contractor and are then inspected by, or on behalf of, the client before the client's representative agrees whether or not the works are in fact complete. In the vast majority of cases this process works to the mutual benefit of both parties.

The contractor will be keen to avoid any liability for delay damages and to limit its exposure to risk, insurance and security. On the other hand, if there are outstanding works to complete the contractor will usually prefer to complete those works whilst he has possession and control of the works rather than trying to complete works after the client has taken possession and occupation. For example, trying to complete works after the client has taken possession may involve working out of normal working hours or may require additional access or security provisions.

Equally the client may want to take possession of the works as soon as possible and to begin using the facility. However, the client will not want to take possession of the facility too early if that means that he has to suffer the contractor's continued presence in completing outstanding works.

Usually a happy medium can be struck.

## 3.3 Disputed completion dates

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### 3.3.1 By contract administrator (CA)

Sometimes the works will be offered up as complete by the contractor but the contract administrator will refuse to certify them as being complete.

The contract administrator will usually have authority to decide whether or not to accept the works as complete on behalf of the client, notwithstanding some small incomplete parts of the works.

The contract administrator will make a decision based on his or her own perception of the facts

independently of any view expressed by the contractor. In so doing the contract administrator may come to a different view as to whether or not the works are complete.

In such cases the contractor may seek to persuade the contract administrator to revise his decision, for example, on the basis that the outstanding works are minimal or that additional works are nowhere near as extensive or disruptive as the contract administrator might imagine.

If the contractor still disagrees with the CA's decision then the contractor's best recourse will usually be through adjudication.

### **3.3.2 By client**

Occasionally the contract administrator will certify completion at a date prior to that on which the client believes the works were in fact completed. In these circumstances the client might dispute that the works are complete despite the fact that they have been certified as such by the contract administrator and accepted as such by the contractor.

The client's recourse in these situations is to refer the matter to an adjudicator who usually has power to open up, review and revise the decision of the contract administrator.

Once the contract administrator has certified completion of the works they cannot 'uncertify' completion even if they genuinely believe that they made a mistake.

### **3.3.3 By contractor**

If the contract administrator refuses to exercise discretion in certifying completion where there are perhaps a few outstanding tasks remaining, perhaps because the client tells him not to, the contractor may well feel aggrieved, but there is usually not much that the contractor can do other than to complete the outstanding works as quickly as possible.

The client usually has the power to revoke the CA's discretion to certify completion notwithstanding that there may be some outstanding works even if those outstanding works are not preventing occupation or enjoyment of the works. This may arise for example if the client does not have a tenant for the works and prefers instead to claim delay damages from

the contractor. Unless the issues complained of are so trifling as to be an absurd basis for refusing to certify completion of the works, the contract administrator will have little choice but to follow the instructions of his client.

In these circumstances the contractor's only recourse is to ask an adjudicator to open up, review and revise the decision of the contract administrator and to certify that completion in fact occurred at a date prior to that certified by the contract administrator. In order to demonstrate to an adjudicator that completion did in fact occur before the date certified by the contract administrator the contractor will need to maintain very detailed records.

### **3.3.4 By sub-contractor**

Sub-contracts will usually provide for completion either using similar criteria to those used in the main contract or directly linking completion of the sub-contract works to issue of the completion certificate under the main contract.

In the former case the sub-contractor can raise its own arguments as to completion of the works independently of any disputes over the main contract. Ultimately the sub-contractor can refer such arguments to adjudication and may obtain a decision that is inconsistent with any decision under the main contract but dealing with similar issues. Such a situation is obviously unsatisfactory for the main contractor.

In the latter case there is little that the sub-contractor can do if the condition of completion under the sub-contract is linked to the issue of the completion certificate under the main contract. Some sub-contracts impose a specific obligation on the main contractor to actively pursue remedies for the sub-contractor under the main contract. Such obligation may be sufficient to impose an obligation on the main contractor to refer disputed completion to an adjudicator. Even where there is no express provision there will be an implied provision on the main contractor to mitigate its loss, either by challenging the contract administrator's assessment of completion under the main contract or by offering the sub-contractor an opportunity to do so in the main contractor's name. Either way it is unlikely that the main contractor will be allowed to pass significant delay damages down

to the sub-contractor if the main contractor has not taken reasonably active measures to secure certification of completion under the main contract.

### 3.3.5 By third parties

Obligations under third party agreements such as leases, funding arrangements or sale agreements, for example, are often triggered by the certification of completion of the works.

The CA will need to keep the interests of these third parties in mind when certifying completion, especially if the immediate client is calling for the certification of completion before the completion of the works. The client may be doing so in order to take advantage of benefits arising under a third party agreement, such as a lease. However, the third party may be unhappy if the commencement of his or her obligations has been artificially advanced simply because it happened to suit the client.

In these circumstances the certifier may have provided or offered collateral warranties to the third parties. If the certifier fails to properly take third party interests into account in fulfilling his or her duties, he or she may become subject to an action under the collateral warranty.

In fulfilling his or her role the certifier will often find that interested parties have opposing requirements when it comes to the certification of completion. This highlights the need for the certifier to remain professional and objective at all times in exercising this function.

## 3.4 Works not in accordance with the contract and incomplete works

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Completion of the works may be certified notwithstanding the existence of patent defects or even incomplete works. This would include works not in accordance with the contract.

Under the JCT contracts the contract administrator usually has discretion as to whether or not to certify completion even though there are patent defects or incomplete works. That discretion is usually (and legitimately) exercised after consultation with the client. The extent to which the client will be prepared to take possession notwithstanding patent defects or incomplete works will be directly proportionate to the client's need for

possession. However the contractor will wish to avoid the client taking possession if there is too much work outstanding as once the client is in occupation, completion of the outstanding works will often be much more difficult.

If the client should wish to take possession when there are still considerable amounts of remedial works / incomplete works to finish, and the contractor is agreeable to the client taking possession, it may be preferable for the client and contractor to record their agreement in a supplemental contract. This could then also deal with the additional restrictions within which the contractor would be required to work, the timescales within which the works are to be complete and any damages payable in the event that those conditions are not achieved.

## 3.5 Latent defects

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Latent defects are defects that are not apparent at the time of completion but which subsequently become apparent months or years later.

Latent defects may be, for example, failed piling, which only shows itself in an unacceptable degree of settlement, or in the rotting of timber caused by inadequate treatment.

By their nature latent defects cannot prevent completion of the works because they are not known about at that time. Defects that are known about at the time of completion are known as patent defects.

In the event that latent defects in the works are discovered after completion of the works has been certified then, subject to any limitation clauses in the contract and subject to the limitation period not having expired, the contractor will be liable for direct costs reasonably incurred by the client as a result. This will include the cost of any appropriate remedial works and also any loss of profit or such like reasonably suffered by the client.

During the defects liability period the contractor has a right to return to the works and undertake the remedial works himself. This is likely to be less expensive for the contractor than paying the client the costs associated with him bringing in a third party contractor to carry out the remedial works.

### **3.6 Client using works before completion**

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There may be circumstances where the client does not wish to take possession of the works before completion but does wish to make some use of them. For example, if the construction works are finished but the boilers are not commissioned the client may nevertheless wish to move in furniture, shelving etc. In the absence of specific provisions in the contract the client would only be able to do so with the express consent of the contractor.

### **3.7 Conditions Precedent**

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In some instances the contract might state that completion of specific activities are conditions precedent to completion being achieved. Clauses such as this limit the scope of the CA's discretion to certify completion notwithstanding that some works remain incomplete.

In this context conditions precedent are sometimes used to ensure that completion will not be certified until after health and safety information has been provided or until after all operation and maintenance manuals have been provided or until after the client's staff have been trained in the proper use of the various building systems. Obviously if these conditions are too onerous they can easily lead to perceived unfairness.

# 4 Practical considerations: level 3 – doing/advising

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This section looks at the practical considerations that need to be taken into account in applying the principles and practical applications discussed previously. A chartered surveyor should consider these aspects when advising on completion matters.

## 4.1 Documentation

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Completion of the works means completion of all of the works described in the contract. These requirements are not limited to completion of the physical works but also include provision of all documentation required by the contract such as certificates, operation and maintenance manuals, health and safety information, collateral warranties, etc. as well as any other information specifically referred to in the contract.

The relationship between completion of the works and issue of a completion certificate by the building control officer is frequently misunderstood. Unless the contract provides otherwise, there is in fact no relationship between the two, although refusal by the building control officer to certify completion will often be a good indicator to the CA to do likewise.

The fact that the two events are not linked can be demonstrated by the following examples:

- The building control officer's refusal to certify completion may be caused by a design issue imposed by the client or his or her design team. If the builder has done all that was required, he or she is entitled to a completion certificate for the works regardless of the refusal of the building control officer to sign it off.
- The building control officer will generally not be interested in decorations or aesthetic defects or external works provided that the building and its components function as required. However defects in the finishing trades or in the aesthetic quality of other trades may well be legitimate cause for the CA to refuse to certify completion despite the fact that the building control officer has signed the building off.

## 4.2 Risk, liability and insurance

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On completion of the works the client takes possession of the works and at that point becomes responsible for any damage to or loss of the works. It therefore becomes the client's responsibility to secure and insure the works to cover the risk of such loss or damage.

If the loss or damage is caused by defective construction works, such as a flood caused by a loose pipe fitting, the client (or its insurers) will be able to recover any loss resulting from the defective construction works from the contractor.

## 4.3 Bonds, guarantees and payments

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Completion of the works is often a significant milestone for bonds, guarantees and payments.

Bonds and guarantees given to the client guaranteeing performance of the contractor's obligations often expire once the works have reached completion.

In this case the client will want to make sure that there has been a diligent search for defects before completion is certified. If a significant defect materialises after bonds and guarantees have expired the client will still have a claim against the contractor, but if the contractor is a relatively small organisation it may not have the financial resources to meet the client's claim.

Completion is also often a milestone that triggers a payment to the contractor. At this stage the contractor will have been paid virtually all of the money to which it is entitled and even if the client holds some money as retention, this may not be sufficient to meet the costs of a significant latent defect. For this reason, again, the client will want to make sure that a diligent search for defects has been undertaken before completion is certified.



## 4.4 Third parties

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When certifying completion of the works before the works are actually complete the CA needs to make sure that he or she has fully taken into account the interests of all third parties. There are situations in which a client will want completion to be certified at an early stage in order to trigger obligations under a lease. However, the requirements of the tenant are likely to be very different, if not directly opposed, to those of the client. In these circumstances the CA will need to consider very carefully the existence and extent of the duties that he or she owes to the various parties.

## 4.5 General considerations

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- What is the test of completion expressed or implied by the contract and specification?
- Does the contract / specification allow the contract administrator to exercise some discretion in determining whether the works are complete notwithstanding some relatively minor outstanding works?
- Has the client or contractor expressed any informed approvals or reservations about the use of such a discretion?
- What will be the impact of completion on third parties and have their interests been taken into account by the contract administrator when considering whether or not to exercise any discretion to certify completion of the works notwithstanding some relatively minor outstanding works?
- Has partial possession been taken? And if so has consideration been given to the obligations of insurances, different commencement dates for rectification/defects liability periods, retention release and in some cases the client's application of liquidated and ascertained damages?
- Where there is sectional completion of the works has consideration been given to the obligations of insurances, different commencement dates for rectification/defects liability periods, retention release and in some cases the client's application of liquidated and ascertained damages?

## 4.6 Definitions

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### (a) *Fault Free Completion*

Various definitions are available from decided cases and the principal textbooks on construction law. Some definitions lean towards perfect, fault free completion:

“One would normally say that a task was practically completed when it was almost, but not entirely finished; but Practical Completion suggests that is not the intended meaning and what is meant is the completion of all the construction work that has to be done.”

*City of Westminster v J. Jarvis & Sons Ltd* (1970) HL, 7 BLR 64 per Viscount Dilhorne at page 75.

And in the same case also, at page 75:

“... The defects liability period is provided in order to enable objects not apparent at the date of practical completion to be remedied. If they had been apparent, no such certificate would have been issued.”

### (b) *Completion for All Practical Purposes*

The above quotations need to be compared with the opinion expressed by Salmon LJ when the same case had earlier been heard by the Court of Appeal:

“The obligation on the contractors under clause 21 to complete the works by the date fixed for completion must, in my view, be an obligation to complete the works in the sense in which the words ‘practically completed’ and ‘practical completion’ are used in clause 15 and clause 16 of the contract. I take these words to mean completion for all practical purposes, i.e. for the purpose of allowing the council to take possession of the works and use them as intended. If completion in clause 21 meant completion down to the last detail, however trivial and unimportant, then clause 22 would be a penalty clause and as such unenforceable”. Ibid, CA [1969] 1 WLR 1448, at page 1458

### (c) *The De Minimis Principle*

Viscount Dilhorne's definition is in any event subject to the de minimis principle to the effect that

completion may have been achieved notwithstanding the existence of minor defects.

For example in *H W Neville (Sunblest) Ltd v William Press & Sons Ltd* (1982) 20 BLR 78 at page 87 His Honour Judge Newey QC stated:

“I think the word practically ... gave the architect a discretion to certify that [the contractor] had fulfilled its obligation under clause 21(1) (of JCT 63) where very minor deficiencies had not been carried out, but that if there were any patent defects in what [the contractor] had done the architect could not have given a certificate of practical completion.”

#### **(d) Impossibility of Perfection**

The development of this argument has involved contrasting the construction industry with other forms of manufacture. In *Emson Eastern Ltd v EME Developments Ltd* (1991) 55 BLR 114 at page 121 His Honour Judge Newey, having been taken through the authorities including his own previous judgment in *William Press* stated:

“I think that probably the most important background fact which I should keep in mind is that building construction is not like the manufacture of goods in a factory. The size of the project, site conditions, use of many materials and employment of various types of operatives make it virtually impossible to achieve the same degree of perfection as can a manufacturer. It must be a rare new building in which every screw and every brush of paint is absolutely correct.”

And in the same case at page 122 he states:

“In my opinion there is room for ‘completion’ as distinct from ‘practical completion’. Because a building can seldom if ever be built precisely as required by drawings and specification, the contract realistically refers to ‘practical completion’, and not ‘completion’ but they mean the same. If, contrary to my view,

completion is something which occurs only after all defects, shrinkages and other faults have been remedied . . . and a certificate to that effect has been given . . . , it would make the liquidated damages provision . . . unworkable and in practice would require the defects liability period to be added to the time initially negotiated by the parties for the carrying out of the works. The construction industry recognizes a difference between the carrying out of new works and ‘snagging’ that is to say dealing with minor defects in them.

“The standard which the architect must apply in deciding when practical completion of the works has been achieved was differently stated by Salmon LJ and by Lord Dilhorne in *Jarvis’* case; the latter being more stringent than the former. In *William Press* I seem to have sought a position in between and I think that that is probably right.”

#### **(e) Remedying Defects**

Another ingredient which it is suggested affects completion is the extent of disruption an employer would incur in allowing access to a contractor to remedy defects or complete works outstanding after the issue of a completion certificate.

In *Big Island Contracting (HK) Ltd v Skink Ltd* 52 BLR 110 at 111 the editors of *Building Law Reports* referring back to *Westminster City Council v J Jarvis & Sons* state:

“Furthermore, an employer must wish to reduce to the very minimum the disruption that is caused by the presence of works going through a snagging list and an architect should not issue a certificate of practical completion until all such work has been completed – unless the employer waives the right to insist upon it being done, and the contractor is willing to continue to work in an occupied building and suitable arrangements have been made for the insurance.”



# Defining completion of construction works

1st edition, guidance note

This guidance note summarises the principal features of completion of construction works under a variety of construction contracts.

It is intended to be of use to surveyors who are certifying, or providing services in consequence of or in relation to, completion of construction works.

Guidance is given under the following headings which map to the Assessment of Professional Competence (APC):

- General Principles (Level 1: Knowing)
- Practical Application (Level 2: Doing)
- Practical Considerations (Level 3: Doing/Advising).



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